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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,348	11/19/2001	Parwinder Grewal	22727/04028	5799

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EXAMINER

WARE, DEBORAH K

ART UNIT PAPER NUMBER

1651

DATE MAILED: 09/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/993,348

Applicant(s)

GREWAL, PARWINDER

Examiner

Deborah K. Ware

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 516.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claims 1-21 are presented for examination on the merits.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on March 14, 2002 and August 6, 2002 were received. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

Claims 1-21 are objected to for inappropriate numerical range expressions wherein in each of claims 1, 18, and 21 the lower range should be listed first and the upper range last. For example, in claim 1, range at line 5, should be --about 0.94 to about 0.98--.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al (US Pat No. 5141744) in view of WO 94/19940 and Popiel et al. (US Pat No. 5183950).

Claims are drawn to a method of protecting plants from insects and formulation therefore, comprising applying the formulation which comprises desiccated

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entomopathogenic nematodes and a carrier to the plants. The formulation having water activity of about 0.94 to about 0.98 and carrier being one which maintains water activity when exposed to air at 70% relative humidity and at 25 degrees Celsius for 24 hours.

Chang et al teach a method of protecting plants from insects and formulation therefore, comprising applying the formulation to plants. Further a carrier is disclosed. Note col. 2, all lines.

WO patent teaches the formulation comprising entomopathogenic nematodes having a water activity of about 0.85 to 0.99 and carrier being one which maintains water activity when exposed to air at 85 to 100% relative humidity at a specified Celsius temperature for a period of time. Note pages 5-16, all lines.

Popiel et al teach reducing the relative humidity to a range between 50 to 94% for a period of time and for storage and further teach a temperature of 25 degrees Celsius. Note col. 4, all lines and col. 6, all lines.

The claims differ from Chang in that the formulation used in Chang is not the same.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to combine the teachings of the cited prior art to provide for a similar formulation as claimed for use in a method for protecting plants. Similar compositions containing the nematodes for protecting plants are well known in the art as disclosed by the cited prior art. One of skill in the art would have been motivated to provide for such formulations. The selection of a carrier as a humectant is clearly within

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in the purview of an ordinary artisan. Water retentive polymers are also obvious modifications well recognized in the art. To provide for a UV protectant is within the purview of the ordinary artisan as these formulations are used outdoors. Also the nematode family members as claimed are also disclosed by the cited prior art. Note col. 5, lines 20-30 of the US Pat No. '950. One of skill in the art would have been motivated to select for varied carriers, water activities and relative humidities as to do so is well known as taught by the cited prior art.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 308-4245. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0196.

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DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware

September 20, 2003